

APPENDIX B

LAWS, REGULATIONS, AND EXECUTIVE ORDERS

BLM must comply with the mandate and intent of the following Federal laws (and any applicable regulations) and EOs that apply to BLM-administered lands and resources in the Planning Area.

Air

Clean Air Act

42 U.S.C. 7401 et seq.

The primary objective of the CAA is to establish federal standards for various pollutants from both stationary and mobile sources and to provide for the regulation of polluting emissions via state implementation plans. In addition, the amendments are designed to prevent significant deterioration in certain areas where air quality exceeds national standards and to provide for improved air quality in areas which do not meet federal standards ("non-attainment" areas).

Federal facilities are required to comply with air quality standards to the same extent as non-governmental entities. Part C of the 1977 amendments stipulates requirements to prevent significant deterioration of air quality and, in particular, to preserve air quality in national parks, national wilderness areas, national monuments, and national seashores.

The amendments establish Class I, II, and III areas, where emissions of particulate matter and sulfur dioxide are to be restricted. The restrictions are most severe in Class I areas and are progressively more lenient in Class II and III areas.

Mandatory Class I federal lands include all national wilderness areas exceeding 500 acres. Federal land managers are charged with direct responsibility to protect the air quality and related values (including visibility) of Class I lands and to consider, in consultation with EPA, whether proposed facilities will have an adverse impact on these values.

American Indians

A. *American Indian Religious Freedom Act* 42 U.S.C. 1996

This act recognizes that freedom of religion for all people is an inherent right and that traditional American Indian religions are an indispensable and irreplaceable part of Indian life. Establishing federal policy to protect and preserve the inherent right of religions freedom for Native Americans, this act requires federal agencies evaluate their actions and policies to determine, if changes should be made to protect and preserve the religious cultural rights and practices of Native Americans. Such evaluations are made in consultation with native traditional religious leaders.

B. *Native American Graves Protection & Repatriation Act* 25 U.S.C. 3001-13

This act establishes requirements for the treatment of Native American human remains and sacred or cultural objects found on federal land.

In any case where such items can be associated with specific tribes or groups of tribes, the agency is required to provide notice of the item in question to the tribe or tribes. Upon request, each agency is required to return any such item to any lineal descendant or specific tribe with whom such item is associated. There are various additional requirements imposed upon the Secretary.

C. *Indian Sacred Sites* EO 13007, May 24, 1996

In managing federal lands, agencies shall, to the extent practicable, permitted by law, and not inconsistent with agency functions, accommodate Indian religious practitioners' access to and ceremonial use of Indian sacred sites. Agencies are to avoid adversely affecting the physical integrity of these sites, maintaining the confidentiality of such sites, and informing tribes of any proposed actions that could restrict access to, ceremonial use of, or adversely affect the physical integrity of, sacred sites.

D. *Consultation & Coordination with Indian Tribal Governments* EO 13175, November 6, 2000

In formulating or implementing policies that have tribal implications, agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

Antiquities/Archaeological

A. *Antiquities Act*

16 U.S.C. §§431-433

This act authorizes the President to designate as National Monuments objects or areas of historic or scientific interest on lands owned or controlled by the United States. The act required that a permit be obtained for examination of ruins, excavation of archaeological sites, and the gathering of objects of antiquity on lands under the jurisdiction of the Secretaries of the Interior, Agriculture, and Army, and provided penalties for violations.

B. *Historic Sites, Buildings and Antiquities Act*

16 U.S.C. 461-462, 464-467

This act declared it a national policy to preserve historic sites and objects of national significance. It provided procedures for designation, acquisition, administration, and protection of such sites. Among other things, National Historic and Natural Landmarks are designated under authority of this act.

C. *Archaeological Resources Protection Act*

16 U.S.C. 470aa - 470ll

This act largely supplanted the resource protection provisions of the Antiquities Act for archaeological items. It established detailed requirements for issuance of permits for any excavation for or removal of archaeological resources from federal or Indian lands. It also established civil and criminal penalties for the unauthorized excavation, removal, or damage of any such resources; for any trafficking in such resources removed from federal or Indian land in violation of any provision of federal law; and for interstate and foreign commerce in such resources acquired, transported or received in violation of any state or local law.

D. *Archeological and Historic Preservation Act*

16 U.S.C. 469-469c

This law was enacted to carry out the policy established by the Historic Sites Act, directed federal agencies to notify the Secretary of the Interior whenever they find a federal or federally assisted, licensed or permitted project may cause loss or destruction of significant scientific, prehistoric, or archaeological data. The act authorized use of

appropriated, donated, and/or transferred funds for the recovery, protection, and preservation of such data.

E. National Historic Preservation Act 16 U.S.C. 470 et seq.

This act provided for preservation of significant historical features (buildings, objects, and sites) through a grant-in-aid program to the states. It established a NRHP and a program of matching grants under the existing National Trust for Historic Preservation. The act established an Advisory Council on Historic Preservation, which was made a permanent independent agency in 1976. Federal agencies are directed to take into account the effects of their actions on items or sites listed or eligible for listing in the NRHP.

F. Protection & Enhancement of Cultural Environment EO 11593, May 13, 1971

Federal agencies are to provide leadership in the preservation, restoration, and maintenance of the historic and cultural environment. Agencies are to locate and evaluate all federal sites under their jurisdiction or control which may qualify for listing on the NRHP. For sites that qualify, agencies are to initiate procedures to maintain such federally owned sites. The Advisory Council on Historic Preservation must be allowed to comment on the alteration, demolition, sale, or transfer of property which is likely to meet the criteria for listing as determined in consultation with the SHPO.

G. Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations EO 12898, February 11, 1994

Agencies shall make achieving environmental justice part of their mission by identifying and addressing disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations.

H. Preserve America EO 13287, March 3, 2003

Agencies shall provide leadership in preserving America's heritage by actively advancing the protection, enhancement, and contemporary use of the historic properties owned by the federal government.

Each agency is to provide and maintain an assessment of the status of its inventory of historic properties and their ability to contribute to community economic development initiatives.

Where consistent with its mission and governing authorities, and where appropriate, agencies shall

- seek partnerships with state and local governments, Indian tribes, and the private sector to promote the unique cultural heritage of communities and of the nation and to realize the economic benefit that these properties can provide; and
- cooperate with communities to increase opportunities for public benefit from, and access to, federally owned historic properties.

Environment—Generally

A. National Environmental Policy Act 42 U.S.C. 4321 et seq.

NEPA encourages productive and enjoyable harmony between man and his environment; promotes efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; and enriches the understanding of the ecological systems and natural resources important to the nation

NEPA requires that for recommendations or reports on proposals for legislation and other major actions significantly affecting the quality of the human environment that federal agencies through a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment include a detailed statement by the responsible official on -

- the environmental impact of the proposed action;
- any adverse environmental effects which cannot be avoided should the proposal be implemented;
- alternatives to the Proposed Action;

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- the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and
- any irreversible and irretrievable commitments of resources which would be involved in the Proposed Action should it be implemented.

B. Protection & Enhancement of Environmental Quality

EO 11514, Mar 5, 1970

Federal agencies shall initiate measures needed to direct their policies, plans and programs so as to meet national environmental goals of protecting and enhancing the quality of the nation's environment to sustain and enrich human life.

Agencies should monitor, evaluate, and control on a continuing basis their agencies' activities so as to protect and enhance the quality of the environment. Such activities shall include those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment.

Agencies shall ensure the fullest practicable provision of timely public information and understanding of federal plans and programs with environmental impact in order to obtain the views of interested parties. This will include, whenever appropriate, provision for public hearings and shall provide the public with relevant information, including information on alternative courses of action.

C. Environmental Quality Improvement Act 42 U.S.C. 4371 et seq.

Ensures that each federal agency conducting or supporting public works activities affecting the environment implements policies established under existing law principally by establishing the Office of Environmental Quality to provide assistance to, and oversight of, federal agencies.

D. Federal Land Policy and Management Act

43 U.S.C. 1701 et seq.

The "Organic Act" for the BLM, this act provides for the inventory and planning of the public lands to ensure that these lands are managed in accordance with the intent of Congress under the principles of multiple use and sustained yield. The lands are to be managed in a manner that protects the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values that,

where appropriate, will preserve and protect certain public lands in their natural conditions, provide food and habitat for fish and wildlife and domestic animals, and provide for outdoor recreation and human occupancy and use by encouraging collaboration and public participation throughout the planning process.

In addition, the public lands must be managed in a manner that recognizes the nation's need for domestic sources of minerals, food, timber, and fiber from the public lands.

Many old laws were repealed, but rights obtained under those laws are protected.

New authority for the disposal of appropriate public lands through sale or exchange is provided.

Right-of-way granting procedures are provided for both the BLM and the USFS.

The regulations contained in 43 CFR Part 1600 govern the BLM planning process.

Fire

Timber Protection Act

16 U.S.C. 594

This act authorizes the Secretary of the Interior to protect timber on lands under the DOI's jurisdiction from fire, disease, and insects

Fish & Wildlife

A. Animal Damage Control Act

7 U.S.C. 426-426c

This act, as amended, gives the Secretary of Agriculture broad authority for investigation, demonstrations, and control of mammalian predators, rodents, and birds.

B. Bald Eagle Protection Act

16 U.S.C. 668-668d

This law provides for the protection of the bald eagle (the national emblem) and the golden eagle by prohibiting, except under certain specified conditions, the taking, possession, and commerce of such birds.

C. Endangered Species Act

16 U.S.C. 1532 et seq.

This act provides for the conservation of ecosystems upon which threatened and endangered species of fish, wildlife, and plants depend, both through federal action and by encouraging the establishment of state programs. The act:

- authorizes the determination and listing of species as endangered and threatened;
- prohibits unauthorized taking, possession, sale, and transport of endangered species;
- provides authority to acquire land for the conservation of listed species, using land and water conservation funds;
- authorizes establishment of cooperative agreements and grants-in-aid to states that establish and maintain active and adequate programs for endangered and threatened wildlife and plants;
- authorizes the assessment of civil and criminal penalties for violating the act or regulations; and
- authorizes the payment of rewards to anyone furnishing information leading to arrest and conviction for any violation of the act or any regulation issued thereunder.

Section 7 of the Endangered Species Act requires federal agencies to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of listed species or modify their critical habitat.

D. Neotropical Migratory Bird Conservation Act

P.L. 106-247

This act provides grants to countries in Latin America and the Caribbean, and the United States for the conservation of neotropical migratory birds that winter south of the border and summer in North America. The law encourages habitat protection, education, researching, monitoring, and capacity building to provide for the long-term protection of neotropical migratory birds.

E. Conservation of Migratory Birds

EO 13186, January 10, 2001

Under the principals of a MOU with the USFWS, each agency shall, to the extent permitted by law, subject to the availability of appropriations, within administration budgetary limits, and in harmony with agency missions, among others:

- support the conservation intent of the migratory bird conventions by integrating bird conservation principles, measures, and practices into agency activities and by avoiding or minimizing, to the extent practicable, adverse impacts on migratory bird resources when conducting agency actions;
- restore and enhance the habitat of migratory birds, as practicable;
- prevent or abate the pollution or detrimental alteration of the environment for the benefit of migratory birds, as practicable;
- design migratory bird habitat and population conservation principles, measures, and practices into agency plans and planning processes as practicable;
- within established authorities and in conjunction with the adoption, amendment, or revision of agency management plans and guidance, ensure that agency plans and actions promote programs and recommendations of comprehensive migratory bird planning efforts; and
- ensure that environmental analyses of actions required by the NEPA or other established environmental review processes evaluate the effects of actions and agency plans on migratory birds.

F. Recreational Fisheries

EO 12962, June 7, 1995

Agencies shall improve the quantity, function, sustainable productivity, and distribution of U.S. aquatic resources for increased recreational fishing opportunities by such activities as:

- developing and encouraging partnerships between governments and the private sector to advance aquatic resource conservation and enhance recreational fishing opportunities;
- identifying recreational fishing opportunities that are limited by water quality and habitat degradation and promoting restoration to support viable, healthy, and, where feasible, self-sustaining recreational fisheries;
- fostering sound aquatic conservation and restoration endeavors to benefit recreational fisheries;
- supporting outreach programs designed to stimulate angler participation in the conservation and restoration of aquatic systems, and implementing laws under their

purview in a manner that will conserve, restore, and enhance aquatic systems that support recreational fisheries.

G. *Exotic Organisms*

EO 11987, May 24, 1977

Agencies, to the extent permitted by law, are to:

- restrict the introduction of exotic species into the natural ecosystems on lands and waters owned or leased by the United States;
- encourage states, local governments, and private citizens to prevent the introduction of exotic species into natural ecosystems of the U.S.;
- restrict the importation and introduction of exotic species into any natural U.S. ecosystems as a result of activities they undertake, fund, or authorize; and
- restrict the use of federal funds, programs, or authorities to export native species for introduction into ecosystems outside the U.S. where they do not occur naturally.

Forests

A. *Forest Service Authorities*

Some of the laws governing the operations and activities of the USFS are

- The National Forest Management Act of 1976, which extensively amended the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.), and which constitutes the "organic act" for the USFS.
- The Multiple Use Sustained Yield Act of 1960 (16 U.S.C. 528 et seq.) established purposes for the Forest System, including outdoor recreation, range, timber, watershed and fish and wildlife.
- The Cooperative Forestry Assistance Act (16 U.S.C. 2100 et seq.), authorizes the Secretary of Agriculture to cooperate on forest management issues with non-federal forest lands.

Various other laws and authorities for the USFS are codified at 16 U.S.C. Sections 471 through 573.

B. *Materials Sales Act*

30 U.S.C. 601

Authorizes the sale or free use of vegetative materials and mineral material (so-called common varieties) not otherwise authorized by other law.

C. *Timber Protection Act*

16 U.S.C. 594

This act authorizes the Secretary of the Interior to protect timber on lands under the Department of the Interior's jurisdiction from fire, disease, and insects

Land

A. *Desert Land Act*

43 U.S.C. 321 et seq.

Allows entry of up to 320 acres of desert land of which the entryman intends to reclaim the land for agricultural purposes within 3 years. Lands must be determined to be available and classified pursuant to 43 U.S.C. 315f before such an entry can be allowed.

B. *Sales of Public Lands*

43 U.S.C. 1713

Allows the sale of public lands found suitable for use other than grazing or the production of forage crops that also

- is difficult and uneconomic to manage; or
- the tract was acquired for a purpose for which the tract is no longer necessary, or
- disposal of the tract will serve important public objectives

C. *Exchanges of Public Land for Non-federal Land*

43 U.S.C. 1716

Allows the exchange of Public Land, or interests therein, for non-federal lands where it is determined (the Secretary finds) that the public interest will be well served by making the exchange. Values of the disposed and acquired lands must be equal in value.

**D. Federal Land Exchange
Facilitation Act**

43 U.S.C. 1716, August 20, 1988

Basically amends the exchange provisions of FLPMA to streamline and facilitate land exchange procedures and to expedite exchanges.

**E. Federal Land Transaction
Facilitation Act**

PL 106-248, July 25, 2000

Provides a more expeditious process for disposal and acquisition of land to facilitate a more effective configuration of land ownership patterns.

Funds from the sale of specified land is deposited in a special fund available to acquire land and to process additional land sales.

Rights-of-Way

With the passage of FLPMA in 1976, BLM was left with existing ROWs (Pre-FLPMA Rights-of-Way) and three basic authorities under which Public Lands may be used or dedicated to various types of ROWs.

A. Pre-FLPMA ROWs

43 U.S.C. 1701 Savings Provision

Various laws provided for ROWs ranging from ditches and canals through communications to railroads. Some are indefinite in term and will remain under the pre-FLPMA authority until abandoned. Others have definite terms and will come under current authorities if amended or renewed.

B. Oil and Gas Pipeline ROWs

30 U.S.C. 185

The Mineral Leasing Act of 1920, as amended, contains provisions for the issuance of ROWs for the transportation of natural gas and oil or products derived therefrom. The term of the ROW is limited to 30 years but is renewable. Where an application involves land administered by two or more federal agencies, the Secretary of the Interior has delegated the decision making to the BLM. Federal agencies are not eligible under this authority.

C. *FLPMA ROWs*

43 U.S.C. 1761 et seq.

Title V of FLPMA gives the BLM authority to authorize most any type of ROW use, other than oil and gas ROWs, on the public lands. The term of the ROW is determined by need and conditions; it may be indefinite but usually is around 30 years. ROWs are renewable.

D. *Federal Aid Highways*

23 U.S.C. 317

Where Federal Aid Highways are involved, the Secretary of Transportation may appropriate federal land for such highway projects. Applications or requests are usually filed by the State Department of Transportation through the local office of the FHWA. If BLM does not disapprove such a request within 120 days, the appropriation is automatic. When BLM issues a letter “consenting” to the appropriation, reasonable terms and conditions may be included.

E. *Energy Supply, Distribution, or Use*

EO 13211, May 18, 2001

This order requires an impact and alternative analysis for any proposed rule that would have an adverse impact on energy supply, distribution, or use.

F. *Action to Expedite Energy-Related Projects*

EO 13212, May 18, 2001

For energy-related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects, while maintaining safety, public health, and environmental protections. The agencies shall take such actions to the extent permitted by law and regulation, and where appropriate.

G. *Environmental Stewardship and Transportation Infrastructure Project Reviews*

EO 13274, September 18, 2002

Agencies shall take appropriate actions, to the extent consistent with applicable law and available resources, to promote environmental stewardship in the nation's transportation system and expedite environmental reviews of high-priority transportation infrastructure projects.

For transportation infrastructure projects, agencies shall, in support of the Department of Transportation, formulate and implement administrative, policy, and procedural

mechanisms that enable each agency required by law to conduct environmental reviews with respect to such projects to ensure completion of such reviews in a timely and environmentally responsible manner.

H. Off-Road Vehicles

EO 11644, February 8, 1972

EO 11989, May 24, 1977

These orders require public land managers "to establish policies and procedures that will ensure that the use of off-road vehicles on public lands will be controlled and directed to protect the resources of those lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands."

Mining & Mineral Leasing

A. General Mining Law

30 U.S.C. 21 et seq.

This authority sets forth rules and procedures for the exploration, location, and patenting of lode, placer, and mill site mining claims. Claimants must file notice of the original claim with the BLM as well as annual notice of intention to hold, affidavit of assessment work, or similar notice.

B. Mining and Mineral Policy Act

30 U.S.C. 21a

This act expressed the national policy to foster and encourage private enterprise in

- the development of economically sound and stable domestic mining, mineral, metal, and mineral reclamation industries,
- the orderly and economic development of domestic mineral resources, reserves, and reclamation of metals and minerals to help assure satisfaction of industrial, security and environmental needs,
- mining, mineral, and metallurgical research, including the use and recycling of scrap to promote the wise and efficient use of our natural and reclaimable mineral resources, and
- the study and development of methods for the disposal, control, and reclamation of mineral waste products, and the reclamation of mined land, so as to lessen any adverse impact of mineral extraction and processing upon the physical environment that may result from mining or mineral activities.

C. *Stock Raising Homestead Act*

43 U.S.C. 291-299

Patents issued under this authority reserved minerals to the United States as well as the right to prospect for, mine, and remove said minerals. Certain conditions exist to protect the patentee's improvements.

D. *Mineral Leasing Act*

30 U.S.C. 181 et seq.

This act authorizes and governs leasing of public lands for development of deposits of coal, oil, gas and other hydrocarbons, sulphur, phosphate, potassium, and sodium.

E. *Federal Coal Leasing Amendments Act*

30 U.S.C. §201

This act made major changes in the way coal leases tracts are established, economic and environmental considerations, sale/leasing procedures, and penalties for violations.

F. *Surface Mining Control and Reclamation Act*

30 U.S.C. 1201 et seq.

This act establishes a program for the regulation of surface mining activities and the reclamation of coal-mined lands, under the administration of the Office of Surface Mining, Reclamation and Enforcement, in the DOI.

The law sets forth minimum uniform requirements for all coal surface mining on federal and state lands, including exploration activities and the surface effects of underground mining. Mine operators are required to minimize disturbances and adverse impact on fish, wildlife, and related environmental values and achieve enhancement of such resources where practicable. Restoration of land and water resources is ranked as a priority in reclamation planning.

G. *Geothermal Steam Act*

30 U.S.C. 1001 et seq.

This act authorizes and governs the lease of geothermal steam and related resources on public lands

H. *Mineral Leasing Act for Acquired Lands*

30 U.S.C. 351 et seq.

This act authorizes and governs mineral leasing on acquired lands.

I. Materials Sales Act

30 U.S.C. 601

Authorizes the sale or free use of vegetative materials and mineral material (so-called common varieties) not otherwise authorized by other law.

Pollution—Generally

A. Resource Conservation and Recovery Act

42 U.S.C. 6901 et seq.

This act regulates the treatment, transportation, storage, and disposal of solid and hazardous wastes. The Service is required to comply with standards for wastes generated at its facilities. The key provisions include:

Identification and listing of hazardous waste and standards applicable to hazardous waste—requires reporting of hazardous waste, permitting for storage, transport, and disposal, and it includes provisions for oil recycling and federal hazardous waste facilities inventories.

- Management for solid waste, including landfills.
- Applicability of federal, state, and local laws to federal agencies.
- Management, replacement, and monitoring of underground storage tanks.

B. Comprehensive Environmental Response Compensation and Liability Act (Superfund)

42 U.S.C. 9601 et seq.

The "Superfund" statute was enacted in 1980; major amendments were enacted in 1983 and in 1986. The 1980 statute authorized, through 1985, the collection of taxes on crude oil and petroleum products, certain chemicals, and hazardous wastes. It also established liability to the U.S. Government for damage to natural resources over which the U.S. has sovereign rights and requires the President to designate federal officials to act as trustees for natural resources. Use of Superfund monies to conduct natural resource damage assessments was provided.

The 1983 amendments established a comprehensive system to react to releases of hazardous substances and to determine liability and compensation for those affected.

The President is authorized to notify federal and state natural resource trustees of potential damages to natural resources and to coordinate related assessments.

Amendments enacted in 1986 (known as the Superfund Amendment and Reauthorization Act, or SARA), among others, 1) added effects on natural resources as a criterion for determining facilities to be placed on the National Priorities List; 2) mandated the designation of federal officials to act as trustees for natural resources and to assess damages and injury to, as well as destruction of, or loss of, natural resources; 3) stipulated that Superfund monies may only be used for natural resource damage claims if all administrative and judicial remedies to recover costs from liable parties have been exhausted; 4) clarified that federal facilities are subject to the same cleanup requirements and liability standards as non-governmental entities, and 5) eliminated the authorization for use of Superfund monies to conduct damage assessments.

C. Federal Environmental Pesticide Control Act 7 U.S.C. §136

This act, in simple terms, provided for a program for controlling the sale, distribution, and application of pesticides through an administrative registration process and for classifying pesticides for "general" or "restricted" use. "Restricted" pesticides may only be applied by or under the direct supervision of a certified applicator

D. Toxic Substances Control Act 15 U.S.C. 2601 et seq.

This act authorized the EPA to obtain data from industry on health and environmental effects of chemical substances and mixtures. If unreasonable risk or injury may occur, EPA may regulate, limit, or prohibit the manufacture, processing, commercial distribution, use, and disposal of such chemicals and mixtures.

E. Pollution Prevention Act 42 U.S.C. 13101 et seq.

This act encourages manufacturers to avoid the generation of pollution by modifying equipment and processes, redesigning products, substituting raw materials, and making improvements in management techniques, training, and inventory control.

F. Federal Compliance with Right to Know Laws and Pollution Prevention Requirements EO 12856, August 3, 1993

Requires agencies to comply with the provisions of the Pollution Prevention Act and to assure all necessary actions are taken to prevent pollution. The Council on

Environmental Quality provided guidance on pollution prevention in the Federal Register of January 29, 1993.

G. Solid Waste Disposal Act

42 U.S.C. 6901 et seq.

Establishes a national policy that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment. It directs the EPA to provide guidelines for the treatment, handling, and storage of such wastes.

Rangelands

A. Taylor Grazing Act

43 U.S.C. 215 et seq.

The TGA was the federal government's first effort to regulate grazing on federal lands. Under the act grazing districts were established of vacant, unreserved, public domain lands which were chiefly valuable for grazing and raising forage crops. Grazing is regulated through leases or licenses for which a fee is paid. Grazing Administration Regulations (43 CFR 4100) provide for the development of state Standards for Rangeland Health and Guideline for Grazing Management. Such standards and guidelines are approved through the BLM's planning and NEPA processes.

The TGA also eliminated settlement on the public domain and provided for the classification and disposal of public lands more valuable for uses other than grazing or the production of forage crops.

B. Public Rangelands Improvement Act

43 U.S.C. 1901 et seq.

This act was instituted to improve public rangeland conditions in the 16 contiguous western states on which there is, or which are capable of, domestic livestock grazing. Rangeland quality is determined by soil quality, forage values, wildlife habitat, watershed and plant communities, the current state of vegetation in a site in relation to its potential, and the relative degree to which the kinds, proportions, and amounts of vegetation in a plant community resemble the desired plant community.

C. Noxious Plant Control Act

43 U.S.C. §§1241-43

Authorizes agencies to allow and pay for state authorities to enter federal land for the control/destruction of noxious plants.

D. Federal Noxious Weed Act

7 U.S.C. 2801 et seq.

This act provides the Secretary of Agriculture authority to designate plants as noxious weeds by regulation and prohibits the movement of all such weeds in interstate or foreign commerce except under permit. The Secretary of Agriculture also has authority to inspect, seize, and destroy products and to quarantine areas, if necessary, to prevent the spread of such weeds. The Secretary of Agriculture is also authorized to cooperate with other federal, state, and local agencies, farmers associations, and private individuals in measures to control, eradicate, or prevent or retard the spread of such weeds.

Each federal land-managing agency is to designate an office or person adequately trained in managing undesirable plant species to develop and coordinate a program to control such plants on the agency's land.

E. Invasive Species

EO 13112, February 3, 1999

The purpose is to prevent the introduction of invasive species and provide for their control, as well as to minimize the economic, ecological, and human health impacts that invasive species cause.

Agencies whose actions may affect the status of invasive species shall: (1) identify such actions; (2) use relevant programs and authorities to prevent, control, monitor, and research such species; and (3) not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere

F. Wild Horses and Burros Act

16 U.S.C. 1331-1340

This act provides for protection of wild, free-roaming horses and burros. It directs the BLM of the DOI and USFS of the Department of Agriculture to manage such animals on public lands under their jurisdiction.

Recreation

Recreation and Public Purposes Act

43 U.S.C. 869 et seq.

This act provides for the lease or disposal of public lands and certain withdrawn or reserved lands to state and local governments, and qualified non-profit organizations to be used for recreational or public purposes. Prices charged for the use or acquisition are normally less than market value of the specific lands. Conditions are imposed in patents, and title may revert to the United States for cause.

Rivers and Streams

A. Wild & Scenic Rivers Act

16 U.S.C. 1271 et seq.

This act establishes a National Wild and Scenic Rivers System and prescribes the methods and standards through which additional rivers may be identified and added to the system.

B. American Heritage Rivers

EO 13061, September 11, 1997

This EO has three objectives: natural resource and environmental protection, economic revitalization, and historic and cultural preservation. Agencies, to the extent permitted by law and consistent with their missions and resources, shall coordinate federal plans, functions, programs, and resources to preserve, protect, and restore rivers and their associated resources important to our history, culture, and natural heritage.

Trails

National Trails System Act

16 U.S.C. 1241-1249

This act provides for establishment of National Recreation, National Scenic, and National Historic Trails.

National Recreation Trails may be established by the Secretary of the Interior or Agriculture on land wholly or partly within their jurisdiction with the consent of the involved state(s) and other land managing agencies, if any. National Scenic and National Historic Trails may only be designated by an Act of Congress.

Water—Generally

A. *Water Resources Planning Act* 42 U.S.C. 1962a - 1962(a)(4)(e)

This act established a Water Resources Council to be composed of Cabinet representatives, including the Secretary of the Interior. It also established River Basin Commissions and stipulated their duties and authorities.

The council was empowered to maintain a continuing assessment of the adequacy of water supplies in each region of the U.S. In addition, the council was mandated to establish principles and standards for federal participants in the preparation of river basin plans and in evaluating federal water projects. Upon receipt of a river basin plan, the council was required to review the plan with respect to agricultural, urban, energy, industrial, recreational, and fish and wildlife needs.

B. *Water Rights* 43 U.S.C. 666

This act waives the sovereign immunity of the United States where there is a suit designed to establish the rights to a river or other source of water, or the administration of such rights, and the United States appears to own or be in the process of acquiring rights to any such water. (The effect is to permit state courts to adjudicate federal water rights claims under state law.)

C. *Federal Water Pollution Control Act* 33 U.S.C. 1251 et seq.

The original 1948 statute, the Water Pollution Control Act, authorized the Surgeon General of the Public Health Service in cooperation with other federal, state, and local entities to prepare comprehensive programs for eliminating or reducing the pollution of interstate waters and tributaries and improving the sanitary condition of surface and underground waters. During the development of such plans, due regard was to be given to improvements necessary to conserve waters for public water supplies, propagation of fish and aquatic life, recreational purposes, and agricultural and industrial uses. The original statute also authorized the Federal Works Administrator to assist states, municipalities, and interstate agencies in constructing treatment plants to prevent discharges of inadequately treated sewage and other wastes into interstate waters or tributaries.

Since 1948, the original statute has been amended extensively either to authorize additional water quality programs, standards, and procedures to govern allowable discharges, funding for construction grants, or general program funding. Amendments in

other years provided for continued authority to conduct program activities or administrative changes to related activities.

D. Clean Water Act

PL 95-217

The CWA extensively amended the Federal Water Pollution Act. Of particular significance were the following provisions:

- Development of a BMP Program as part of the state areawide planning program
- Authority for the USACE to issue general permits on a state, regional, or national basis for any category of activities which are similar in nature will cause only minimal environmental effects when performed separately and will have only minimal cumulative adverse impact on the environment
- Exemption of various activities from the dredge and fill prohibition including normal farming, silviculture, and ranching activities (33 U.S.C. 1344(f))
- Procedures for state assumption of the regulatory program.

The CWA requires the EPA to establish water quality standards for specified contaminants in surface waters and forbids the discharge of pollutants from a point source into navigable waters without a National Pollutant Discharge Elimination System (NPDES) permit. NPDES permits are issued by EPA or the appropriate state, if it has assumed responsibility. Section 404 of the CWA establishes a federal program to regulate the discharge of dredged and fill material into waters of the United States. Section 404 permits are issued by the USACE.

E. Safe Drinking Water Act

42 U.S.C. §300h

This act establishes a program to monitor and increase the safety of all commercially and publically supplied drinking water. Amended in 1986 to require the EPA to establish Maximum Contaminant Levels (MCLs), Maximum Contaminant Level Goals (MCLGs), and Best Available Control Technology (BACT) treatment techniques for organic, inorganic, radioactive, and microbial contaminants, and turbidity. Current federal MCLs, MCLGs, and BACTs in public drinking water supplies were set in 1996.

F. Water Quality Act

PL 100-4

This act provided the most recent series of amendments to the Federal Water Pollution Act. Provisions included:

- Requirement that states develop strategies for toxics cleanup in waters where the application of BACT discharge standards is not sufficient to meet state water quality standards and support public health;
- Increase in the penalties for violations of Section 404 permits; and
- Requirement that EPA study and monitor the water quality effects attributable to the impoundment of water by dams.

G. Flood Control Act

16 U.S.C. 460d and other

This act, as amended and supplemented by other flood control acts and river and harbor acts, authorizes various USACE water development projects. This statute expressed congressional intent to limit the authorization and construction of navigation, flood control, and other water projects to those having significant benefits for navigation and which could be operated consistently with other river uses. The authority to construct, operate, and maintain public park and recreational facilities in reservoir areas was also provided.

H. Oil Pollution Act

33 U.S.C. 2701 et seq.

This act established new requirements and extensively amended the Federal Water Pollution Control Act to provide enhanced capabilities for oil spill response and natural resource damage assessment

Among other provisions are that federal trustees shall assess natural resource damages for natural resources under their trusteeship. Federal trustees may, upon request from an Indian tribe or state, assess damages to natural resources for them as well. Trustees shall develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of natural resources under their trusteeship.

I. Floodplain Management

EO 11988, May 24, 1977

The purpose of this EO is to prevent agencies from contributing to the "adverse impacts associated with the occupancy and modification of floodplains" and the "direct or indirect support of floodplain development."

In the course of fulfilling their respective authorities, agencies "shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains."

Before proposing, conducting, supporting or allowing an action in a floodplain, each agency is to determine if planned activities will affect the floodplain and evaluate the potential effects of the intended actions on its functions. Agencies shall avoid siting development in a floodplain "to avoid adverse effects and incompatible development in the floodplains,"

J. Protection of Wetlands

EO 11990, May 24, 1977

Similar to Floodplain Management, agencies are directed to consider alternatives to avoid adverse effects and incompatible developments in areas of wetlands. New construction is to be avoided if possible.

K. Colorado River Storage Project Act

43 U.S.C. 620

This act authorized the Secretary of the Interior to construct a variety of dams, power plants, reservoirs, and related works. The act also authorized and directed the Secretary of the Interior, in connection with the development of the Colorado River Storage Project and participating projects, to investigate, plan, construct, and operate facilities to mitigate losses of and improve conditions for fish and wildlife and public recreational facilities. The act provided authority to acquire lands and to lease or convey lands and facilities to state and other agencies.

L. Colorado River Basin Project Act

43 U.S.C. 1501-1556

This act provided a program for the comprehensive development of the water resources of the Colorado River Basin, and directed the Secretary of the Interior to develop, after consultation with affected states and appropriate federal agencies, a regional water plan to serve as the framework under which projects in the Colorado River Basin may be coordinated and constructed.

M. Colorado River Floodway Protection Act 100 Stat. 1129

This act established a Colorado River Floodway Area, within which are prohibited 1) all new federal funding or financial assistance for any purpose (except for listed exceptions), 2) federal flood insurance for new construction or substantial improvements begun six months after enactment on existing structures, and 3) the granting of new federal leases (unless the Secretary of the Interior determines that the purpose is consistent with the act).

N. Colorado River Basin Salinity Control Act 43 U.S.C. §§1571-1599

This act authorized the construction of facilities necessary to meet the terms of the 1973 Salinity Agreement with Mexico.

Wilderness

A. Wilderness Act 16 U.S.C. 1131 et seq.

This act established a National Wilderness System of areas to be designated by Congress. It directed the Secretary of the Interior, within 10 years, to review every roadless area of 5,000 or more acres and every roadless island (regardless of size) within National Wildlife Refuge and National Park Systems and to recommend to the President the suitability of each such area or island for inclusion in the National Wilderness Preservation System, with final decisions made by Congress. The Secretary of Agriculture was directed to study and recommend suitable areas in the National Forest System.

The act provides criteria for determining suitability and establishes restrictions on activities that can be undertaken on a designated area. Criteria set by Congress within this act states that wilderness areas have the following characteristics: (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and confined types of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value. The Wilderness Act also set the accepted uses of designated WAs and what uses are prohibited. The act sets special provisions for an

agency's continuing management of existing or grandfathered rights such as mining and grazing and other agency mission related activities.

B. The California Desert Protection Act

P.L. 103-433

This act designated lands in the California Desert as wilderness, established Death Valley and Joshua Tree National Parks, and established the Mojave National Preserve. Each WA designated would be administered by BLM in accordance with the provisions of the Wilderness Act, except that any reference to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this title.

Other

A. Base Closure and Realignment Act

Title II of P.L. 100-526

The act establishes a preference for the sale of land made surplus as a result of base closures or reductions, with the funds to be utilized for the costs of the closures, or for transfer of the land to a local redevelopment authority. It does not require such sales, however, nor does it repeal the provisions of law permitting the no- or reduced-cost transfer of such land to federal agencies or the states for conservation purposes.

B. Cave Resources Protection Act

16 U.S.C. 4301 et seq.

This act established requirements for the management and protection of caves and their resources on federal lands, including allowing the land managing agencies to withhold the location of caves from the public and requiring permits for any removal or collecting activities in caves on federal lands.

C. Federal Power Act

16 U.S.C. §§791-828c

Established what is now the Federal Energy Regulatory Commission (FERC) studies water-related power development possibilities. Licenses and oversees the development of water power project on federal and non-federal lands. On federal land coordinates with agencies and for some agencies they may dictate conditions to be included in licenses.

The FERC also regulates interstate electric transmission lines and interstate oil and gas pipelines, and issues 'certificates of public convenience' for these interstate facilities.

D. Land and Water Conservation Fund 16 U.S.C. 460I - 460I-11

The fund is derived from various types of revenue (primarily Outer Continental Shelf oil monies) and appropriations from the fund may be used for 1) matching grants to states for outdoor recreation projects and 2) land acquisition for various federal agencies.

E. Federalism EO 13132, August 4, 1999

In formulating and implementing policies that have federalism implications, agencies shall be guided by the following principles:

- Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government closest to the people.
- The people of the states created the national government and delegated to it enumerated governmental powers. All other sovereign powers, save those expressly prohibited the states by the Constitution, are reserved to the states or to the people.
- The framers of the Constitution recognized that the states possess unique authorities, qualities, and abilities to meet the needs of the people and should function as laboratories of democracy.
- The nature of our constitutional system encourages a healthy diversity in the public policies adopted by the people of the several states according to their own conditions, needs, and desires. One-size-fits-all approaches to public policy problems can inhibit the creation of effective solutions to those problems.
- Policies of the national government should recognize the responsibility of—and should encourage opportunities for—individuals, families, neighborhoods, local governments, and private associations to achieve their personal, social, and economic objectives through cooperative effort.
- The national government should be deferential to the states when taking action that affects the policymaking discretion of the states and should act only with the greatest caution where state or local governments have identified uncertainties regarding the constitutional or statutory authority of the national government.

F. Takings

EO 12630, March 15, 1988

The Fifth Amendment of the United States Constitution provides that private property shall not be taken for public use without just compensation. Government historically has used the formal exercise of the power of eminent domain, which provides orderly processes for paying just compensation to acquire private property for public use. Recent Supreme Court decisions, however, in reaffirming the fundamental protection of private property rights provided by the Fifth Amendment and in assessing the nature of governmental actions that have an impact on constitutionally protected property rights, have also reaffirmed that governmental actions that do not formally invoke the condemnation power, including regulations, may result in a taking for which just compensation is required.

Agencies shall evaluate carefully the effect of their actions on constitutionally protected property rights to prevent unnecessary takings and should account in decision making for those takings that are necessitated by statutory mandate.

G. Regulatory Impact Analysis

EO 12866, September 30, 1993

Requires agencies to analyze the economic impact of proposed rules.